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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: Vermont Service Center Date: OCT 18 2000
EAC 00 107 52781

IN RE: Petitioner:
Beneficiary: [redacted]

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(A)(iii)

IN BEHALF OF PETITIONER:

Public Copy

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Ecuador who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director determined that the petitioner failed to establish that he: (1) has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; and (2) is a person whose deportation (removal) would result in extreme hardship to himself, or to his child. The director, therefore, denied the petition.

On appeal, the applicant claims that the Service did not place enough weight on the documents submitted and erred in holding that he did not establish he was subjected to extreme cruelty by his spouse. He states that as a male it is difficult to document extreme cruelty because of the society we live in, and that the standard to prove extreme cruelty for a male should not be the same as that for a woman. He further states that he married his wife because he wanted to be by her side for life, and for no apparent reason she treated him with cruelty and abandoned him, which was the ultimate act of extreme cruelty. The applicant further claims that the Service also erred in determining that he would not incur extreme hardship if forced to return to his native country. He states that he had not lived in his country for several years and he would have enormous difficulties in adjusting to life there; in the U.S. he has always been employed and has never received public assistance; and if forced to return, he does not know where he will live or work.

8 C.F.R. 204.2(c)(1) states, in pertinent part, that:

> (i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:
>
> > (A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character;

(G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The record of proceeding does not contain information on the date the petitioner entered the United States, how he entered the United States, or his current immigration status. The petitioner married his United States citizen spouse on June 5, 1996 [redacted] On February 16, 2000, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his U.S. citizen spouse during their marriage.

8 C.F.R. 204.2(c)(1)(i)(E) requires the petitioner to establish that he has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage.

The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. 204.2(c)(1)(vi) provides:

> [T]he phrase, "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being

the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

8 C.F.R. 204.2(c)(2) provides, in part:

(i) Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * *

(iv) Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuse may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

The director reviewed the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence on April 4, 2000. He noted that the letter from [redacted] stating that the petitioner

suffered from emotional abuse, and the affidavits from friends stating that they have known the petitioner and his spouse for a long time and that he started having problems and they are no longer living together, are insufficient to establish that the petitioner has been subject to "extreme cruelty."

On appeal, the petitioner states that as a male it is difficult to document extreme cruelty, and that the standard to prove extreme cruelty for a male should not be the same as that for a woman. However, as mandated by Congress, all applicants (regardless of gender) seeking special immigrant status under the battered spouse provisions of the Violence Against Women Act must qualify on the same basis.

The applicant, on appeal, argues that the Service did not place enough weight on the documents submitted and erred in holding that he did not establish he was subjected to extreme cruelty by his spouse. The claim of qualifying abuse, however, was evaluated by the director after a review of the evidence in this matter. He determined that the record did not contain satisfactory evidence to establish that he has been battered by, or has been the subject of extreme cruelty perpetrated by, his citizen spouse. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service. 8 C.F.R. 204.2(c)(2)(i).

Further, the psychosocial assessment from [redacted] fails to indicate that any objective evidence or criteria was utilized in determining the source or severity of the petitioner's emotional condition. Rather, the alleged emotional abuse described by [redacted] was based purely on the testimony of the petitioner, and failed to establish that her conclusion was based on anything other than statements made by the petitioner. No evidence was furnished to establish that the petitioner availed himself of any further psychological or medical treatment. Furthermore, the record contains no evidence that the marital difficulties were compounded by any effort on the part of the citizen spouse to control the petitioner with threats regarding his immigration status. Rather, the record indicates that the citizen spouse merely abandoned the marital relationship. "Abandonment" is not included in, nor does it meet, the definition of qualifying abuse as provided in 8 C.F.R. 204.2(c)(1)(vi).

As provided in 8 C.F.R. 204.2(c)(1)(vi), the qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." The evidence furnished is insufficient to establish that the claimed abuse perpetrated toward the petitioner by her spouse was "extreme." Nor did the affiants establish that they are eye-witnesses to the abuse and knew

sufficient details regarding any incidents of abuse or extreme cruelty. The petitioner has failed to establish that she was battered by or was the subject of "extreme cruelty" as contemplated by Congress, and to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(E).

8 C.F.R. 204.2(c)(1)(i)(G) requires the petitioner to establish that her removal would result in extreme hardship to herself or to her child. 8 C.F.R. 204.2(c)(1)(viii) provides:

> The Service will consider all credible evidence of extreme hardship submitted with a self-petition, including evidence of hardship arising from circumstances surrounding the abuse. The extreme hardship claim will be evaluated on a case-by-case basis after a review of the evidence in the case. Self-petitioners are encouraged to cite and document all applicable factors, since there is no guarantee that a particular reason or reasons will result in a finding that deportation (removal) would cause extreme hardship. Hardship to persons other than the self-petitioner or the self-petitioner's child cannot be considered in determining whether a self-petitioning spouse's deportation (removal) would cause extreme hardship.

Because the petitioner furnished no evidence to establish that his removal to Ecuador would be an extreme hardship to himself, the petitioner was requested on April 4, 2000 to submit additional evidence. The director listed examples of factors to be considered in determining whether his removal from the United States would result in extreme hardship. No additional evidence was furnished, nor did the petitioner address the director's request for evidence.

On appeal, the applicant claims that he has not resided in his country for several years and he would have difficulties in adjusting to life there, and that if forced to return, he does not know where he will live or work.

Readjustment to life in the native country after having spent a number of years in the United States is not the type of hardship that has been characterized as extreme, since most aliens who have spent time abroad suffer this kind of hardship. See Matter of Uy, 11 I&N Dec. 159 (BIA 1995). Further, the loss of current employment, the inability to maintain one's present standard of living or to pursue a chosen profession, separation from a family member, or cultural readjustment do not rise to the level of extreme hardship. See Matter of Iqe, 20 I&N Dec. 880, 882 (BIA 1994); Lee v. INS, 550 F.2d 554 (9th Cir. 1977).

The record contains no evidence to establish that the petitioner would be unable to pursue his occupation or comparable employment upon his return to Ecuador, or that he would not receive support from his family there.

While the petitioner, on appeal, asserts that the Service erred in determining that he would not incur extreme hardship if returned to his native country, the record reflects that after reviewing the record of proceeding, the director determined that no evidence was furnished by the petitioner to establish eligibility. Again, on appeal, the petitioner failed to submit additional evidence to establish extreme hardship.

The record lists no other equities which might weigh in the petitioner's favor. Even applying a flexible approach to extreme hardship, the facts presented in this proceeding, when weighed in the aggregate, do not demonstrate that the petitioner's removal would result in extreme hardship to himself. The petitioner has failed to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(G).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.